

STATE OF INDIANA )  
COUNTY OF ELKHART )

SS:

IN THE ELKHART SUPERIOR COURT 3  
CAUSE NO. 20D03-1103-PL- 10

LEO VANNORMAN, et al.,

Plaintiffs,

vs.

FLEXSTEEL INDUSTRIES, INC., LDL REALTY  
COMPANY, LLC., DAVID L. DYGERT AND  
PHYLLIS B. DYGERT

Defendants.

11/03-3 PM 3:12  
ELKHART SUPERIOR CT. NO.3

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF  
AND REQUEST FOR JURY TRIAL**

Plaintiffs, Leo VanNorman and Debbie VanNorman and their son William A. VanNorman and daughter Algerita Sanders; Ron McAtee and Karen McAtee and their son Ryne S. Haller and Daughter Kayla Haller; Kim Haller; Christopher Browning and Julie Browning and their son Justin McGarry and daughter Brittany McGarry, all currently or formerly of Elkhart County, Indiana (collectively referred to herein as the "Plaintiffs"), by counsel, and for their cause of action against Defendants, FlexSteel Industries, Inc. ("FlexSteel"), LDL Realty Company, LLC ("LDL"), David L. Dygert and Phyllis B. Dygert; allege and state:

**I. NATURE OF THE ACTION**

Plaintiffs bring this action to recover damages they have suffered as a result of their exposure to trichloroethylene ("TCE") and other industrial strength chemicals in their drinking water and in the air inside of their homes. TCE is a chlorinated hydrocarbon that is often used as a solvent and degreasing agent for cleaning metal

parts, and is also a common ingredient in industrial adhesives. The International Agency for Research on Cancer has determined that TCE is "probably carcinogenic to humans" and has classified it as a group 2A carcinogen. The United States Environmental Protection Agency ("EPA") characterizes TCE as "carcinogenic to humans" by all routes of exposure. The defendants in this case owned and/or operated a manufacturing facility and property on which welding and other industrial processes took place for the purpose of manufacturing seats for the van and recreational vehicle industry. As a direct and proximate result of the Defendants' wrongful actions and/or inactions, TCE, 1-1-1- trichloroethane ("TCA"), and other industrial chemicals were leaked, spilled, dumped and/or otherwise released into the environment.

After the Defendants' chemicals entered the environment, they migrated undetected through the subsurface soil and groundwater into the Plaintiffs' neighborhood (the "Meadow Farms Subdivision") and into their homes and bodies. The Plaintiffs' were unknowingly exposed to unsafe levels of TCE through drinking, bathing, cooking, and simply occupying their homes and breathing the contaminated indoor air. As a result of Plaintiffs' exposure to the Defendants' hazardous chemicals, the Plaintiffs have suffered irreversible injury to their DNA and are now at an increased risk of developing cancer and other serious diseases in the future. Additionally, at least one Plaintiff suffers from a rare form of cancer that has been associated with exposure to TCE. Through this suit, Plaintiffs seek damages for injuries to their person and property, medical monitoring to detect early onset of diseases, and an injunction ordering the Defendants to remove all of their chemicals from the Meadow Farms

Subdivision and all upgradient or other areas of their contamination affecting the Meadow Farms Subdivision.

## **II. THE PARTIES**

1. Plaintiffs Leo VanNorman and his son William A. VanNorman are citizens of St. Joseph County, Indiana, who reside at 2120 Lincoln Way East, Mishawaka, Indiana.

2. Plaintiff Debbie VanNorman is a citizen of St. Joseph County, Indiana, who resides at 1325 Farmcrest Circle, Apt. 3B, Mishawaka, Indiana.

3. Plaintiff Algerita Sanders is a citizen of Grant County, Indiana, who resides at 1013 West Estate Street, Marion, Indiana.

4. Plaintiffs Ron McAtee and Karen McAtee and their son Ryne S. Haller and Daughter Kayla Haller are citizens of Elkhart County, Indiana, who reside at 1615 Locust Street, Apt. 203, Elkhart, Indiana.

5. Plaintiff Kim Haller is a citizen of St. Joseph County, Michigan who resides at 69801 Deer Road, Sturgis, Michigan.

6. Plaintiffs Christopher Browning and Julie Browning and their son Justin McGarry and daughter Brittany McGarry are citizens of Elkhart County, Indiana, who reside at 53564 Lane Street, Elkhart, Indiana.

7. Defendant FlexSteel is a Minnesota corporation with its principal place of business located at 3400 Jackson Street, Dubuque, Iowa.

8. Defendant LDL is an Indiana corporation with its principal place of business located at 120 W. Lexington Avenue, Elkhart, Indiana.

9. Defendant David L. Dygert is a citizen of Elkhart County, Indiana, who resides at 53220 Sylvan Ct., Bristol, Indiana.

10. Defendant Phyllis B. Dygert is a citizen of Elkhart County, Indiana, who resides at 53220 Sylvan Ct., Bristol, Indiana.

### **III. JURISDICTION**

11. The Defendants, individually and collectively, either engage in business in the State of Indiana; have caused personal injury and property damage by acts or omissions in the State of Indiana; have or are supplying services or have contracted to supply services rendered or to be rendered in the State of Indiana; or, own, use, or possess real property or have interests in real property in the State of Indiana. As such, this Court has jurisdiction over this cause pursuant to Indiana Trial Rules 4.4(A)(1), 4.4(A)(2), 4.4(A)(4), and 4.4(A)(5).

### **IV. VENUE**

12. The acts or omissions that are the subject of this Complaint occurred in Elkhart County, Indiana, and the greater percentage of Defendants reside and have their principal place of business in Elkhart County, Indiana. Moreover, one or more of the Plaintiffs reside and/or own real property in Elkhart County, Indiana. Therefore, venue in this county is proper under Indiana Trial Rules 75(A)(1), 75(A)(2), 75(A)(4), and 75(A)(5).

### **V. BACKGROUND FACTS**

13. The Plaintiffs own and/or occupy or previously owned and/or occupied homes in the Meadow Farms Subdivision located in Elkhart County, Indiana.

**A. Dygerts Purchase and Build Facility on the Site**

14. In 1983, defendants David and Phyllis Dygert purchased vacant farmland located approximately 200 hundred yards to the northwest of the Meadow Farms Subdivision for the purpose of constructing a manufacturing facility.

15. The property consisted of two tracts of land, a northern tract with a street address of 23542 Cooper Drive, Elkhart, Indiana (the "Cooper Drive Property"), and a southern tract with a street address of 53381 Marina Drive, Elkhart, Indiana (the "Marina Drive Property") (sometimes collectively referred to as the "Site").

16. The Cooper Drive Property and the Marina Drive Property are adjacent to each other and were connected by a common driveway which allowed for easy access between the properties.

17. Shortly after David and Phyllis Dygert purchased the Site, Dygert Seating Inc., ("Dygert Seating") constructed a manufacturing facility and began manufacturing seats for the van and recreational vehicle industry.

18. Upon information and belief, Dygert Seating leased the Site from David and Phyllis Dygert, but never owned the land.

19. According to the Indiana Secretary of State, David and Phyllis Dygert were the principal officers of Dygert Seating.

20. Dygert Seating used the facility on the Cooper Drive Property to perform metal work, including welding operations in connection with the seat manufacturing process.

21. Dygert Seating used the facility on the Marina Drive Property to manufacture foam seats which were subsequently attached to metal frames.

22. An aerial photograph taken in 1992 shows a large amount of debris piled on the pavement near the southeast corner of the building on the Cooper Drive Property.

23. A subsequent aerial photograph, date unknown, shows staining on the pavement in that same area of the Cooper Drive Property.

24. The 1992 aerial photograph also shows a large amount of debris piled on bare ground immediately to the west of the building on the Marina Drive Property.

25. In 1994 or 1995, Dygert Seating purchased the assets of a company known as Goshen Cushion, located at 1010 Eisenhower Drive in Goshen, Indiana ("Goshen Cushion").

26. Dygert Seating was underfunded at the time, and David Dygert put up several personal guarantees to secure the purchase.

27. Goshen Cushion operated a manufacturing business on its property in Goshen, Indiana, and was in the business of manufacturing seats for vans and recreational vehicles, just like Dygert Seating.

28. Goshen Cushion regularly used and stored large amounts of hazardous chemicals in connection with its manufacturing operations.

29. In December 1996, David Dygert closed the Goshen Cushion facility in Goshen, Indiana, and moved all of its operations, including all of its hazardous chemicals, to the Site.

30. On January 22, 1997, David and Phyllis Dygert transferred the Site to themselves as tenants by the entireties pursuant to a Warranty Deed for the Cooper Drive Property and the Marina Drive Property.

31. The Warranty Deed provided "that David L. Dygert and Phyllis B. Dygert, as tenants in common, the Grantors, convey and warrant to David L. Dygert and Phyllis B. Dygert as tenants by the entireties, the Grantees, . . . [the Cooper Drive Property and the Marina Drive Property]."

32. Eight days later, on January 30, 1997, Dygert Seating filed for protection under Chapter 11 of the United States Bankruptcy Code.

33. The action was later converted to a Chapter 7.

**B. FlexSteel Buys the Site to Conduct Its Manufacturing Under the Name of Dygert Seating**

34. On March 3, 1997, less than five weeks after filing for bankruptcy protection, Dygert Seating and FlexSteel tendered an agreed order by which FlexSteel purchased all of the assets of Dygert Seating.

35. Less than one month later, David Dygert and Phyllis Dygert executed a Warranty Deed conveying title to the Site to FlexSteel.

36. In its 1997 Annual Report to Shareholders, filed with the Securities and Exchange Commission ("SEC"), FlexSteel stated: "[i]n March we announced the acquisition of the assets of Dygert Seating, Inc. including their RV seating production facility in Elkhart, Indiana. Dygert Seating, who had previously purchased another RV seating maker, Goshen Cushion, reported sales of over \$30 million in 1996. We have long been a leading supplier to high-end motor homes and van conversions, and the addition of Dygert's lines gives us broader market coverage as well as greater production capacity in the van, sport vehicle, and light truck markets."

37. FlexSteel's 1999 Annual Report to Shareholders, filed with the SEC, states "[t]he benefits from the 1997 acquisition of Dygert Seating are being realized in

broader product coverage. Sales in all three of these markets - vans, towables and motor homes – remain strong, and the demographics for future growth are encouraging.”

38. Upon information and belief, after it purchased Dygert Seating’s assets and the Site, FlexSteel continued to operate Dygert Seating as a FlexSteel division in substantially the same fashion and used substantially the same materials and employees, and generated the same wastes, as Dygert Seating prior to the Flexsteel acquisition.

39. For instance, on February 23, 2000, FlexSteel submitted a document to the Elkhart County Health Department identifying Greg Lucchese as V.P of Operations and Gregg Gaskill as V.P. of Purchasing for FlexSteel/Dygert Division.

40. Greg Lucchese was a former officer of Dygert Seating and Gregg Gaskill was Dygert Seating’s director of purchasing.

41. Additionally, on February 28, 2001, FlexSteel submitted a document to the Elkhart County Health Department listing David Dygert as the General Manager for its Dygert Division.

**C. LDL is Formed By Dygert to Own the Marina Drive Property**

42. On July 15, 2004, David Dygert, Greg Lucchese and Gino Lucchese incorporated defendant LDL.

43. Fifteen days later, on July 30, 2004, FlexSteel transferred the Marina Drive Property to LDL pursuant to a Warranty Deed.

44. On February 25, 2005, FlexSteel transferred the Cooper Drive Property to Fred L. Lands pursuant to a Warranty Deed.

45. Upon information and belief, LDL, under the direction and control of Dygert and the Luccheses, operated the Marina Drive Property from July 30, 2004 until May 31<sup>st</sup>, 2007 under the name of Dygert Seating.

46. Upon information and belief, LDL conducted Dygert Seating's operations in substantially the same fashion as it had previously been operated and used substantially the same materials and employees, and generated the same wastes.

47. For instance, on August 15, 2008, David Dygert sent an email to the EPA stating "I operated Dygert Seating and the succeeding companies from Jan. of 1983 until May 31<sup>st</sup>, 2007."

**D. Defendants Released Hazardous Chemicals Into the Environment**

48. Upon information and belief, between January 1983 and May 31<sup>st</sup>, 2007, Dygert Seating, under the direct control of David and Phyllis Dygert, and the succeeding companies, FlexSteel and LDL, (collectively referred to herein as the "Dygert Seating Entities") leaked, spilled, dumped and/or otherwise released hazardous chemicals including TCE and TCA into the subsurface soil and groundwater at the Site on multiple occasions.

49. Upon information and belief, the Dygert Seating Entities have committed, and/or conspired to commit at least two acts that are indictable under 18 U.S.C. § 1341 (mail fraud), at least one act that is indictable under 18 U.S.C. § 1343 (interstate wire fraud), and at least two acts that are indictable under 18 U.S.C. § 1503 (obstruction of justice) in an attempt to conceal information about their hazardous waste releases from environmental regulators.

50. The hazardous chemicals released by the Dygert Seating Entities have migrated offsite and into the homes and bodies of the Plaintiffs.

51. The contamination caused by the Dygert Seating Entities remains in the subsurface soils and groundwater in the Meadow Farms Subdivision and continues to constitute an imminent and substantial threat to human health or the environment.

**E. The Dygert Seating Entities Generated and Disposed of Hazardous Waste and Were Therefore Required to Comply with RCRA**

52. In 1976, Congress enacted the Resource Conservation and Recovery Act ("RCRA"), a comprehensive statutory scheme providing cradle-to-grave oversight of solid and hazardous waste.

53. RCRA's Subtitle C, 42 U.S.C. §§ 6921-39, governs the generation, transportation, storage and disposal, and treatment of hazardous wastes to minimize present and future threats to human health and the environment.

54. To that end, section 3004 of RCRA, 42 U.S.C. § 6924, directs the United States Environmental Protection Agency ("EPA") to promulgate regulations establishing standards for owners and operators of hazardous waste facilities, and also permits the EPA to promulgate regulations establishing standards for compliance with section 3005 of RCRA.

55. Section 3005 of RCRA, 42 U.S.C. § 6925, prohibits any person from treating, storing, or disposing of hazardous waste without (1) a permit issued pursuant to Section 3005; or (2) designation of "interim status," obtained by notifying the EPA of the person's hazardous waste activities and submitting an application for a permit. 42 U.S.C. § 6925(a) & (e).

**F. The Dygert Seating Entities Failed to Comply with RCRA**

56. The Dygert Seating Entities never notified the EPA of the full extent of their generation and storage of hazardous waste on the Site.

57. The Dygert Seating Entities also failed to properly assess their generation, storage and disposal of hazardous waste, failed to characterize their hazardous waste, and have never disclosed to the Indiana Department of Environmental Management ("IDEM") or the EPA the severity and extent of their noncompliance with the federal and state hazardous waste programs.

**G. The Dygert Seating Entities Caused Contamination**

58. As a result of the Dygert Seating Entities' illegal storage and disposal of hazardous waste, soil and groundwater at and under the Site, as well as off-site properties, is contaminated with TCE, TCA and other industrial chemicals.

59. A groundwater plume of hazardous chemicals, including TCE and TCA, extends from the Site into the Meadow Farms subdivision, where dozens of families have lived and raised their children since the late 1970s. A diagram prepared by IDEM showing the Dygert Seating Entities' chlorinated groundwater plume is attached hereto as Exhibit A.

60. As a result of the Dygert Seating Entities' illegal storage and disposal of hazardous waste, homeowners within the Meadow Farms Subdivision have been exposed to TCE through their consumption of TCE in water from their private drinking wells at levels that exceed established toxicity levels.

61. The Dygert Seating Entities' concealment of their RCRA violations caused significant human exposure to the Dygert Seating Entities' hazardous wastes.

**H. David Dygert and FlexSteel Committed Mail Fraud and Obstruction of Justice in order to Conceal Illegal Hazardous Waste Practices in 1997**

62. When Dygert Seating purchased Goshen Cushion, Goshen Cushion was using large amounts of hazardous chemicals in its manufacturing processes at 1010 Eisenhower Drive in Goshen, Indiana.

63. For instance, during an inspection on August 23, 1994, as part of Elkhart County's Groundwater Protection Ordinance, the inspector identified eight 55 gallon drums of adhesive, three 300 gallon aboveground storage tanks containing adhesives, three 55 gallon drums of MK-Activator, eight 55 gallon drums of oil, four 55 gallon drums of thinner and 5,000 lbs of argon stored in an above ground storage tank.

64. A Material Safety Data Sheet ("MSDS") contained in the Elkhart County Health Department's file for Goshen Cushion identifies TCE as an 80% ingredient in at least one of the adhesives used in Goshen Cushion's manufacturing operations.

65. On December 5, 1996, the Elkhart County Health Department conducted a follow-up inspection of Goshen Cushion at the property located on Eisenhower Drive in Goshen, Indiana.

66. During that inspection, the inspector was told, "[t]his business is closed at this location – the plant shut down on December 1, 1996 and building is being emptied out. Company is moving into Dygert Seating 53381 Marina Dr., Elkhart. Building is empty after January 30, 1997."

67. Upon information and belief, the hazardous chemicals that were being used by Goshen Cushion, including large amounts of adhesives containing TCE, were transported to the Marina Drive Property and/or the Cooper Drive Property and were thereafter used in the Dygert Seating Entities' manufacturing operations at the Site.

68. Upon information and belief, the Dygert Seating Entities failed to comply with section 3005 of RCRA by failing to submit an application for a permit.

69. Upon information and belief, the Dygert Seating Entities also failed to comply with SARA Title III reporting requirements by failing to report their use of TCE and TCA above the threshold reporting requirements.

70. On July 23, 1997, approximately four months after FlexSteel purchased Dygert Seating's assets and approximately three months after FlexSteel purchased the Site from David and Phyllis Dygert, David Dygert submitted a form titled Notification of Regulated Waste Activity to IDEM.

71. Upon information and belief, David Dygert deposited the July 23, 1997 Notification of Regulated Waste Activity in the United States mail to be delivered to IDEM by the Postal Service or by any private or commercial carrier (the "July 23, 1997 Mailing").

72. The July 23, 1997 Mailing was submitted to IDEM because David Dygert and FlexSteel had generated a large amount of hazardous waste at the Site, and they needed to dispose of the hazardous waste.

73. Environmental regulations require that every time hazardous waste is hauled off-site for disposal the generator must submit a manifest so that IDEM and EPA can track the generation, storage and disposal of hazardous waste at each individual site.

74. Upon information and belief, David Dygert prepared the July 23, 1997 Mailing because his waste hauler refused to remove the hazardous waste from the Site unless Dygert notified IDEM pursuant to the environmental regulations.

75. Upon information and belief, the waste hauler also required David Dygert and FlexSteel to disclose on the Notification of Regulated Waste Activity report that the Dygert Seating Entities were Large Quantity Generators of hazardous waste (more than 2,200 pounds per month).

76. Upon information and belief, David Dygert and FlexSteel became concerned because they did not have a RCRA ID number for the Site, due to their prior failure to notify the U.S. EPA or IDEM of the hazardous waste activities in violation of RCRA.

77. IDEM considers the RCRA registration and notification requirements to be very important because that is how IDEM tracks hazardous waste generation, storage and disposal in the State of Indiana.

78. According to IDEM's website, "[t]he Resource Conservation and Recovery Act (RCRA) requires anyone who handles hazardous waste to notify IDEM (as authorized by U.S. EPA) of their regulated waste activities. [By obtaining a RCRA Identification number.]"

79. IDEM's website continues "[y]ou must determine which generator classification is correct for your installation. If you notify as a 'Generator greater than 1000 kg/mo (2200 lbs)' you are a Large Quantity Generator and are subject to all applicable regulations under Subtitle C of RCRA including the biennial Report. You are also subject to annual Generator fees under Indiana statute IC 13-22-12-3. If you notify as a 'Generator 100 to 1000 kg/mo (220-2200 lbs)' you are a Small Quantity Generator and are subject to IC 13-22-4-3.1 which requires you to submit an annual report summarizing your hazardous waste shipments for each year."

80. IDEM's website also notes that "[t]he RCRA ID number is site-specific[.]" and that "[i]f your installation changes locations, a new notification is required and you will receive a new ID number."

81. Upon information and belief, David Dygert and FlexSteel were concerned that if IDEM found out that the Dygert Seating Entities were storing and generating large quantities of hazardous waste at the Site without a site-specific RCRA ID Number, they would face fines, site investigations and possible criminal prosecution.

82. Upon information and belief, David Dygert and FlexSteel were also concerned that if IDEM found out that the Dygert Seating Entities were operating as a Large Quantity Generator at the Site, IDEM would require them to pay Generator fees under Indiana statute IC 13-22-12-3, and to file reports disclosing the full scale of their hazardous waste operations.

83. Upon information and belief, David Dygert and FlexSteel devised a scheme to defraud IDEM into believing that the waste was not generated at the Site by listing the RCRA ID Number from the former Goshen Cushion site on the Notification of Regulated Waste Activity report.

84. The July 23, 1997 Mailing was sent in furtherance of the scheme to defraud IDEM.

85. Upon information and belief, FlexSteel assisted in preparing the July 23, 1997 Mailing, or at a minimum, knew and tacitly approved of its contents.

86. In the July 23, 1997 Mailing, David Dygert used the RCRA ID number for the former Goshen Cushion site located on 1010 Eisenhower Drive in Goshen, Indiana.

87. David Dygert signed the July 23, 1997 mailing and certified under oath, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision . . . [and] the information submitted is to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

88. David Dygert knew that the waste had not been generated at the 1010 Eisenhower Drive in Goshen, Indiana address because that facility had been vacant for several months and all of its operations and materials were moved to the Site.

89. A letter sent to IDEM by Dygert Seating's attorney on May 5, 1998 (the "May 5, 1998 Mailing") (discussed more fully below) confirms that David Dygert's representations in the July 23, 1997 Mailing about the source of the hazardous waste were false, and confirms that the waste was generated at the Site.

90. David Dygert and FlexSteel's scheme to defraud IDEM was successful.

91. After IDEM received the July 23, 1997 Mailing, it sent a letter to Gregg Gaskill (the Dygert Seating Entities' V.P. of Purchasing) dated April 24, 1998, and inquired about Goshen Cushion's activities at the 1010 Eisenhower Drive, Goshen Indiana address.

92. In the letter to Mr. Gaskill, IDEM noted that its records indicated that Goshen Cushion was a Large Quantity Generator of hazardous waste, and asked why it had not submitted its Hazardous Waste Biennial Report.

93. In the letter to Mr. Gaskill, IDEM further noted "[i]n December 1997 a copy of the 1997 Hazardous Waste Biennial Report was sent to the company. Indiana rules

329 IAC 3.1-7-14, 3.1-9-1 and 3.1-10-1 require Treatment, Storage and Disposal Facilities and Large Quantity Generators (LQGs) submit this report by March 1 of every even-numbered year for the preceding year. To date we have received no response from your company.”

94. When it sent the letter to Mr. Gaskill, IDEM had no way of knowing that the hazardous waste documented in the 1997 Hazardous Waste Biennial Report was actually generated by the Dygert Seating Entities at the Site.

95. The IDEM letter also states, “[f]ailure to respond to this correspondence will lead to a referral to the Office of Enforcement.”

96. Upon information and belief, upon receiving IDEM’s letter, Gaskill, Dygert and FlexSteel became concerned that if IDEM brought an enforcement action it would learn the full extent of the Dygert Seating Entities’ non-compliance with environmental regulations, and the Dygert Seating Entities’ and David Dygert would face possible fines and potential imprisonment.

97. Upon information and belief, Gaskill, Dygert and FlexSteel devised a scheme to defraud IDEM and avoid detection of their environmental crimes.

98. In furtherance of the scheme to defraud, Gaskill sent the letter to the Dygert Seating Entities’ attorney and asked him to respond.

99. On April 30, 1998, Dygert Seating’s attorney called IDEM about the letter.

100. An internal IDEM email describes the conversation as follows: “[a]n attorney for Dygert Seating IND005253513 just called to say that the company is bankrupt and nobody is there anymore and that basically there is no way in \_\_\_\_\_ that

we're going to get a report out of them. He is sending a letter to that effect. When we get that just mark it in the log."

101. On May 5, 1998, Dygert Seating's attorney deposited in the mail to be delivered to IDEM by the Postal Service or by any private or commercial carrier a letter addressed to Ms. Jenny Ranck Dooley, Waste Data Analysis and Planning, Solid & Hazardous Waste Management, Indiana Department of Environmental Management (the "May 5, 1998 Mailing").

102. In the May 5, 1998 Mailing, Dygert Seating's attorney told IDEM "Your letter of April 24, 1998, to Mr. Gregg Gaskill has been forwarded to me for response by Mr. Gaskill, a former employee of DSI, Inc. (formerly Dygert Seating, Inc.). DSI ceased doing business during 1997 with the filing of a bankruptcy petition."

103. The letter continues, "[t]here are no plans for the Corporation to come out of bankruptcy. Its assets have been liquidated and it no longer is in business, nor does it have any employees who can submit reports. Our firm has acted as counsel to DSI both prior to and during the bankruptcy, and is familiar with the current status of the Corporation."

104. At best, the statements in the May 5, 1998 Mailing are misleading.

105. Although Dygert Seating had filed for bankruptcy protection, the bankruptcy was still ongoing as of the date of the letter and Dygert Seating was not officially dissolved until December 4, 2000.

106. Additionally, Dygert Seating's executives, including David Dygert and Gregg Gaskill, went directly to work for FlexSteel in its Dygert Seating division upon FlexSteel's acquisition of Dygert Seating's assets in March 1997.

107. Therefore, Dygert Seating's attorney had access to the information that IDEM was requesting and could have submitted the report that IDEM had asked for.

108. The May 5, 1998 Mailing also states, "[b]y way of explanation, DSI did have one hazardous waste transaction during 1997, when a number of drums were manifested from a site which was sold in the bankruptcy."

109. Upon information and belief, the "site" that was sold in bankruptcy where the drums originated consisted of the Site (i.e., the Marina Drive Property and the Cooper Drive Property.)

110. The May 5, 1998 Mailing also states "While I do not have the details of the transaction, it is more likely than not that it would have resulted in DSI being a large quantity generator during 1997. However, since the Corporation's assets are now in the hands of the Trustee and the Corporation is being liquidated, I have no way to confirm that transaction."

111. The statement that "the Corporation's assets are now in the hands of the Trustee" was intentionally misleading because FlexSteel purchased the assets of Dygert Seating on approximately March 3, 1997, and had been operating its Dygert Seating division for more than a year.

112. The statement that "I have no way to confirm the transaction" is also intentionally misleading because Greg Gaskill and David Dygert were employees in FlexSteel's Dygert Seating division, and could easily have provided IDEM with the requested information.

113. Gaskill, David Dygert and FlexSteel's scheme to defraud IDEM was successful, and IDEM dropped the investigation believing that there was no way to obtain the information that it was seeking.

114. An IDEM interoffice memo dated September 30, 1998 states "A letter from [Dygert Seating's attorney], dated May 5, 1998, states that Dygert Seating, Inc (DSI) had filed bankruptcy and ceased doing business in 1997. . . . DSI has not been at this site for over one year. I recommend the EPA Identification number for this site be deactivated."

115. By using the RCRA ID Number for the Goshen Cushion facility located at 1010 Eisenhower Drive in Goshen, Indiana on the Notification of Regulated Waste Activity report that was mailed to IDEM on July 23, 1997, David Dygert and FlexSteel used the mail to defraud IDEM concerning the source of the hazardous waste that was being disposed of in violation of 18 U.S.C. § 1341 (mail fraud).

116. By falsely certifying that the information on the Notification of Regulated Waste Activity report was "true, accurate, and complete," David Dygert prevented IDEM from learning that the Dygert Seating Entities were operating as large quantity hazardous waste generators at the Site without a permit. David Dygert's false certification under oath was a violation of 18 U.S.C. § 1503 (obstruction of justice).

117. When IDEM inquired about the contents of the Notification of Regulated Waste Activity report David Dygert and FlexSteel used their attorney to send a letter to IDEM in order to avoid detection of the fraud in violation of 18 U.S.C. § 1341 (mail fraud) and the holding in *U.S. v. Boisture*, 563 F.3d 295 (7<sup>th</sup> Cir. 2009).

I. **The Defendants' Hazardous Waste Contamination  
Went Undetected for More than a Decade**

118. In November 2006, in connection with a potential property transfer, environmental contamination was discovered on an industrial property owned by Geocel Corporation that was located across the street from the Marina Drive Property (the "Geocel Groundwater Plume").

119. Upon information and belief, David Dygert learned of the Geocel Groundwater Plume in late April 2007, but did not know its source.

120. Approximately one month later, on May 31<sup>st</sup>, 2007, for unknown reasons, David Dygert ceased his employment with the Dygert Seating Entities.

121. On June 7, 2007, Geocel's environmental consultant told John Hulewicz, the Environmental Health Supervisor for the Elkhart County Health Department, that it had discovered environmental contamination with potential offsite impacts.

122. Subsequent testing indicated that the Geocel Groundwater Plume had impacted residential wells in the Meadow Farms Subdivision on a street named Kershner Lane (additional testing discussed more fully below has confirmed that Geocel's Groundwater Plume and the Defendant's Groundwater Plume are separate and distinct, and have not comingled).

123. Darlene Knoll, a resident of the Meadow Farms Subdivision who resides at 53514 Lane Street (Lane Street is east of, and runs parallel to, Kershner Lane), read about the Geocel contamination in the newspaper and became concerned about the safety of her own water supply.

124. Ms. Knoll called Mr. Hulewicz and expressed her concern.

125. In response, Mr. Hulewicz suggested that Ms. Knoll have her water tested.

126. Ms. Knoll collected a tap water sample and submitted it to Heidelberg College for analysis.

127. The results of her water test indicated that her tap water was contaminated with industrial chemicals, including TCE, at levels that were more than 200 times above the maximum contaminant level set by the EPA.

128. Ms. Knoll reported the results to Mr. Hulewicz.

129. The next day, Mr. Hulewicz and Mark Jaworski, a senior project specialist with IDEM, visited Ms. Knoll's house and collected additional water samples.

130. The water samples confirmed that Ms. Knoll's tap water was contaminated with unsafe levels of industrial solvents including TCE, and indicated that several other private wells, including the Plaintiffs' wells, were also contaminated.

131. Mr. Hulewicz told the people with contaminated wells to immediately stop using their water.

132. He told them not to drink it, not to cook with it, and not even to use it for bathing.

133. He informed them that when they turned on the faucet they could be exposed to harmful vapors even if they were not drinking the water.

134. He also told them that if they had to run the faucet for some reason they should only use cold water, and they should open the windows to allow the vapors to escape.

#### **EPA's and IDEM's Subsurface Tests Detected Groundwater Contamination**

135. As a result of the drinking water contamination, EPA listed Lane Street on its National Priority List and declared the site a Superfund site.

136. The Superfund designation allowed federal funds to be used to provide the people on Lane Street with an alternate water source.

137. In August 2007 and again in April 2008, IDEM and EPA conducted additional testing in and up gradient of the Meadow Farms Subdivision.

138. The groundwater in that area flows south/southwest.

139. The results of IDEM and EPA's testing identified a plume of groundwater contamination that appears to originate on the Marina Drive Property and the Cooper Drive Property and extend down Lane Street and into the Plaintiffs' homes and properties. See Exhibit A.

140. Testing performed by IDEM and the EPA on April 14-17, 2008, detected contaminants on the Cooper Drive Property that included TCE, TCA, perchlorethylene ("PCE"), benzene, ethyl-benzene, xylenes and toluene.

141. Those chemicals were detected near and immediately down gradient of the area where the Dygert Seating Entities formerly stored debris.

142. The April 14-17, 2008, testing also detected TCE in the groundwater at levels as high as 770 ppb.

143. The highest levels of TCE were detected in and immediately down gradient of the area where debris had been piled on bare ground on the Site since at least 1992; however, neither EPA nor IDEM has yet concluded that the Site is the source of the contamination.

144. Prior to the discovery of the contamination, the Plaintiffs received their water from residential potable wells located on their properties.

145. Upon information and belief, Hazardous chemicals which originated from the Site, including TCE and TCA, have contaminated the Plaintiffs' potable water supply wells.

146. Hazardous chemicals which originated from the Site, including TCE, have migrated under the Plaintiffs' homes and volatilized causing harmful vapors to enter the Plaintiffs' homes.

147. As a result of the Defendants' acts and/or omissions, the Plaintiffs have been exposed to toxic chemicals in their drinking water and indoor air, and have suffered inhalation, ingestion and dermal exposure to TCE and other hazardous chemicals.

148. The Plaintiffs have been exposed to these chemicals, through no fault of their own, as a result of ordinary activities such as drinking water from their faucets, cooking and bathing in their water, and breathing the air in their homes.

149. Upon information and belief, the Defendants' hazardous waste contamination silently impacted the Plaintiffs' homes and bodies for decades before it was finally discovered.

**K. The Effects of the Contamination on the Plaintiffs**

150. The hazardous waste contamination that invaded the Plaintiffs' homes and bodies includes TCE, an industrial solvent characterized by the EPA as "carcinogenic to humans" by all routes of exposure.

151. The Plaintiffs have ingested and inhaled TCE that damaged them physically, mentally, and emotionally.

152. The Federal Agency for Toxic Substances and Disease Registry (“ATSDR”) performed a Public Health Assessment for the Lane Street Groundwater Contamination site which it released on approximately April 12, 2010.

153. In its report, the ATSDR concluded that the site was a past public health hazard.

154. The designation of “public health hazard” is ATSDR’s highest level of concern.

155. As a result of their exposure to the TCE contamination, the Plaintiffs are at an increased risk of developing cancer or other illness and disease.

156. TCE poses an especially serious health risk to children. Over the years there have been several minor children who have resided in the Meadow Farms Subdivision and several pregnancies by women while living in their homes in the Meadow Farms Subdivision.

157. The TCE that invaded the Plaintiffs’ homes and drinking water, as well as the subsurface soil and groundwater, has interfered with the comfortable enjoyment of their respective homes and rendered those homes and property unmarketable, and otherwise caused Plaintiffs to suffer physical, mental, emotional, and property damage.

158. Additionally, in its Public Health Assessment, the ATSDR concluded that people who drank water containing 300 ppb TCE for ten years or more approach a moderate to high increased risk of developing cancer.

159. Plaintiff Karen Lowery’s water was tested twice in 2007 and once in 2008.

160. All three times TCE was detected at levels of 300 ppb and above.

161. In 2007, Ms. Lowery was diagnosed with biliary cancer.

162. According to the Mayo Clinic's website, biliary cancer is "rare" and only about 2,000 new cases are diagnosed in the entire United States each year.

163. On June 12, 2007, Dr. Thomas Sinks, Deputy Director of the ATSDR and of the National Center for Environmental Health (NCEH) at the Centers for Disease Control and Prevention (CDC) testified before a Congressional subcommittee concerning the toxic health effects of TCE.

164. During his testimony, Dr. Sinks stated "[o]ccupational exposure to TCE also has been associated with adult cancers such as kidney cancer, liver and biliary cancer and non-Hodgkin's lymphoma."

165. Ms. Lowery's biliary cancer was surgically removed in 2007 but then reoccurred in 2010.

166. Ms. Lowery has had two surgeries and numerous rounds of chemotherapy to treat her cancer, but she is concerned that the doctors will be unable to cure her.

167. Ms. Lowery believes that her exposure to the Defendants' TCE caused her biliary cancer, and she is terrified that her children will also develop cancer because of their exposure to the Defendants' TCE.

168. When he gave his Congressional testimony, Dr. Sinks also stated that "[o]ccupational exposure to TCE may cause nervous system effects, kidney, liver and lung damage, abnormal heartbeat, coma, and possibly death."

169. Other Plaintiffs have suffered illnesses such as abnormal heartbeats and kidney problems and they are concerned these problems were caused by their exposure to the contamination caused by the Defendants.

170. All of the Plaintiffs' are concerned that either they or a loved one will develop cancer or some other serious latent disease sometime in the future because of their exposure to the Defendants' hazardous waste contamination.

**L. The Cover-Up**

171. After the TCE contamination was discovered in the private drinking water wells on Lane Street, IDEM and EPA began an investigation to try to determine the source.

172. As part of that investigation, IDEM and EPA collected hundreds of groundwater samples in the Meadow Farms Subdivision and in the industrial park to the north.

173. That sampling confirmed that the Geocel Groundwater Plume was not impacting the Lane Street wells.

174. That sampling also pointed to the Site as the likely source, but stopped short of conclusively identifying the source.

175. IDEM and the Elkhart County Health Department conducted inspections and interviewed employees of the various businesses that operated in the industrial park.

176. However, no one claimed responsibility and everyone who was interviewed by the government agencies denied any knowledge of the source of the contamination.

177. Ultimately, since IDEM and the Elkhart County Health Department were unable to conclusively identify the source, the matter was referred to Carol Ropski, Enforcement Specialist for U.S. EPA Region V, Emergency Response Branch.

178. Ms. Ropski began her own investigation and interviewed two former employees of the Dygert Seating Entities.

179. Both of the former employees of the Dygert Seating Entities denied any knowledge of the source of the contamination.

180. Upon information and belief, David Dygert learned of the EPA's investigation in approximately August 2008.

181. Upon information and belief, David Dygert was concerned that if the EPA learned that the Dygert Seating Entities were the source of the contamination, they would be forced to spend hundreds of thousands, and possibly millions of dollars to investigate and remediate the site.

182. Upon information and belief, David Dygert devised a scheme to defraud the EPA into believing that the Dygert Seating Entities were not the source of the contamination.

183. On August 15, 2008, David Dygert sent an email to the EPA concerning the investigation.

184. Upon information and belief, Dygert sent the email from Indiana and EPA received it at their offices in Chicago, Illinois.

185. In the email Dygert stated "I had the building built in 1982-3 & added on twice in 6 years. I operated Dygert Seating & the succeeding companies from Jan. of 1983 until May 31<sup>st</sup> 2007. I know of no contaminates [sic] that were ever used during that time."

186. Dygert's statement that "I know of no contaminates [sic] that were ever used during that time[.]" was false.

187. For instance, on August 27, 1985, Max Michael, an inspector with the Elkhart County Health Department Groundwater Protection Program conducted an inspection of the Marina Drive Property.

188. During the inspection, Mr. Michael noted two metal drums that were being used in connection with the manufacturing activities.

189. According to Mr. Michael's notes, one drum contained glue and one drum contained solvent.

190. Mr. Michael also noted that Dygert Seating was generating hazardous waste that included excess foam and fabric used in the manufacturing process.

191. Upon information and belief, the excess foam and fabric was contaminated with industrial adhesives that contained TCE and/or TCA.

192. Upon information and belief, during the inspection Mr. Michael asked Dygert Seating's Vice President of Manufacturing for MSDSs for the glue and the solvent that were being stored in the metal drums.

193. On August 29, 1985, Gregg Gaskill submitted MSDSs to Mr. Michael that showed that the glue was composed of 80% TCA and 20% synthetic resins and rubber and the solvent was 100% methylene chloride.

194. On November 11, 1988, Dean Tribble, general manager of manufacturing for Dygert Seating, submitted a Tier Two Emergency and Hazardous Chemical Inventory form for the Marina Drive Property to the Elkhart County Health Department.

195. The Tier Two form listed Dave Dygert as the owner/operator and noted that Dygert Seating was using TCA, 1,4 dioxane, and methylene chloride in its manufacturing operations.

196. On February 14, 1989, Tribble submitted a second Tier Two Emergency and Hazardous Chemical Inventory form for the Marina Drive Property to the Elkhart County Health Department.

197. Tribble again listed Dave Dygert as the owner/operator and again indicated that Dygert Seating was using TCA, 1,4 dioxane, and methylene chloride in its manufacturing operations.

198. On March 18, 1991 and again on April 17, 1992, Gregg Gaskill submitted a Tier Two Emergency and Hazardous Chemical Inventory form for the Cooper Drive Property listing Dygert Seating as the owner/operator and indicating that Dygert Seating was also using argon and carbon dioxide in its manufacturing operations.

199. Upon information and belief, the argon and carbon dioxide were being used in connection with welding operations.

200. Upon information and belief, solvents and degreasers such as TCE and/or PCE also were used at the Site by the Dygert Seating Entities in connection with those operations.

201. On April 17, 1992, Gregg Gaskill again submitted a Tier Two Emergency and Hazardous Chemical Inventory form for the Cooper Drive Property listing Dygert Seating as the owner/operator and indicating that Dygert Seating was using argon and carbon dioxide in its manufacturing operations.

202. On March 2, 1993, the Marina Drive Property was again inspected by the Elkhart County Health Department as part of the Ground Water Protection Program.

203. Upon information and belief, Gregg Gaskill accompanied the inspector during the inspection and provided him with information in response to his questions.

204. During the 1993 inspection, the inspector noted that Dygert Seating was storing hazardous or toxic substances at the Marina Drive Property.

205. The inspector also noted that Dygert Seating had violated environmental regulations for failing to register and for not conducting a wastewater characterization.

206. The inspector also noted that Dygert Seating was storing one 55 gallon drum of adhesive containing TCA, and approximately five 55 gallon drums of adhesive containing acetone and toluene.

207. On March 2, 1993, the Cooper Drive Property was also inspected by the Elkhart County Health Department as part of the Ground Water Protection Program.

208. Upon information and belief, Gregg Gaskill accompanied the inspector during that inspection as well.

209. During the 1993 inspection, the inspector noted that Dygert Seating was storing hazardous or toxic substances at the Cooper Drive Property.

210. The inspector also noted that Dygert Seating had violated environmental regulations for failing to register.

211. The inspector identified one 55 gallon drum of hydraulic oil and one five gallon bucket of machine oil as hazardous/toxic substances that were being stored in the weld shop.

212. On June 2, 1995, the Elkhart County Health Department conducted another inspection of the Marina Drive Property.

213. This time, the inspector was accompanied by Greg Lucchese.

214. The inspector identified three 55 gallon drums and a five gallon bucket that were being used by Dygert to store hazardous chemicals.

215. One drum contained Parabond, two contained Premium Adhesive, and the five gallon bucket contained methylene chloride.

216. Upon information and belief, the two drums of Premium Adhesive contained TCE at a concentration of 80% which equates to approximately 88 gallons of TCE.

217. According to the EPA, just five drops of TCE is enough to contaminate an Olympic size swimming pool above drinking water standards.

218. 88 gallons of TCE weighs over 1000 pounds and is more than ten times the reporting threshold for TCE under SARA Title III.

219. However, the Dygert Seating Entities never notified IDEM or EPA that they were using significant amounts of TCE or other chlorinated compounds in their manufacturing operations.

220. On January 7, 1999 (after FlexSteel's 1997 purchase of Dygert Seating's Assets and of the real estate underlying the Site), the Elkhart County Health Department conducted another inspection of the Marina Drive Property.

221. The inspector again was accompanied by Greg Lucchese.

222. The inspector noted that Dygert Seating was storing hazardous or toxic substances including a fifty-five gallon drum of hydraulic oil, a fifty-five gallon drum of adhesive and a five gallon bucket of methylene chloride.

223. On October 29, 2001, the Elkhart County Health Department conducted another inspection of the Marina Drive Property.

224. During that inspection, the inspector identified three fifty-five gallon drums of adhesive, two buckets of methylene chloride and 3 buckets of prime as hazardous or toxic substances that were being stored on site.

225. During the time the Dygert Seating Entities operated the Marina Drive Property and the Cooper Drive Property, from approximately January 1983 until May 31, 2007, massive amounts of toxic and hazardous substances, including TCE, TCA, PCE and Methylene Chloride were used and stored and disposed of in connection with their manufacturing operations.

226. By falsely stating to the EPA investigator "I operated Dygert Seating & the succeeding companies from Jan. of 1983 until May 31<sup>st</sup> 2007. I know of no contaminates that were ever used during that time[.]" David Dygert defrauded the EPA investigator into believing that the Dygert Seating Entities were not the source of the Meadow Farms Subdivision contamination in violation of 18 U.S.C. § 1343 (interstate wire fraud) and corruptly endeavored to impede the due administration of justice in violation of 18 U.S.C. § 1503 (obstruction of justice).

227. David Dygert's scheme to defraud was successful, and the EPA has not brought an enforcement action against the Dygert Seating Entities as of the date of this Complaint.

#### **Count I – Trespass**

228. Plaintiffs hereby incorporate paragraphs 1 through 227 of this Complaint as though fully restated herein.

229. The Defendants unlawfully interfered with Plaintiffs' property and rights by allowing or causing hazardous chemicals and associated fumes emanating from the

Site to enter the Plaintiffs' homes and by allowing or causing contamination to migrate onto the Plaintiffs' properties including into their potable water supply wells.

230. The entry of the hazardous chemicals that emanated from the Site and that entered the Plaintiffs' homes and that migrated onto the Plaintiffs' properties were and continue to be an unauthorized invasion and intrusion by the Defendants onto the Plaintiffs' properties.

231. Plaintiffs, collectively and individually, have suffered damages as a result of the Defendants' unlawful interference with their properties and/or unauthorized invasion or intrusion of hazardous chemicals onto their properties and into their homes and bodies.

232. By causing or allowing the entry of hazardous chemicals into the Plaintiffs' homes and bodies and by allowing or causing the migration of hazardous chemicals onto the Plaintiffs' properties, the Defendants have committed a trespass and are liable to Plaintiffs for all damages caused by the trespass.

### **Count II – Nuisance**

233. Plaintiffs hereby incorporate paragraphs 1 through 232 of this Complaint as though fully restated herein.

234. The hazardous chemicals that migrated onto Plaintiffs' properties and the contamination that impacted the Plaintiffs' potable wells and the vapors that entered Plaintiffs' homes as a result of the release(s) at the Site were injurious to Plaintiffs' health, offensive to their senses, and an obstruction to Plaintiffs' use and enjoyment of their properties. As such, the hazardous chemicals and vapors unduly interfered with Plaintiffs' use and comfortable enjoyment of their homes and properties.

235. Plaintiffs have suffered damages as a result of the Defendants' undue interference with their use and comfortable enjoyment of their homes and properties.

236. Pursuant to Indiana Code §32-30-6-7, the Defendants have committed a nuisance by allowing or causing hazardous chemicals to enter Plaintiffs' properties and potable wells and vapors to enter Plaintiffs' homes, and Defendants are liable to Plaintiffs for all damages arising out of this nuisance.

### **Count III – Negligence**

237. Plaintiffs hereby incorporate paragraphs 1 through 236 of this Complaint as though fully restated herein.

238. The Defendants owed a duty to Plaintiffs, who are or were the neighbors of the Site, to use, store, and dispose of hazardous chemicals in a manner that prevented their release into the environment, the spill or migration of hazardous chemicals onto Plaintiffs' properties, into their potable wells, and the migration of vapors into Plaintiffs' homes.

239. When the Defendants allowed hazardous chemicals to be released at the Site and allowed or caused the migration of the contamination onto Plaintiffs' property and the entry of vapors into the Plaintiffs' homes, the Defendants breached their duty to the Plaintiffs.

240. The Defendants also owed Plaintiffs a duty to advise them of their release(s) of hazardous chemicals and the harms associated with such release(s). The Defendants breached this duty by failing to give Plaintiffs timely notice of the release(s) and associated risks.

241. The Defendants also owe a duty to the Plaintiffs to diligently investigate and remediate all hazardous chemical releases in a timely and effective manner in order to protect human health and the environment and to prevent the migration of additional contamination onto the Plaintiffs' properties and the entry of vapors into the Plaintiffs' homes.

242. The Defendants have failed to properly identify and/or delineate the extent of off-site contamination and/or failed to remediate off-site contamination, thereby breaching their duty to Plaintiffs.

243. As a result of the Defendants' breaches of their duties of reasonable care, Plaintiffs have suffered damages.

244. The Defendants' breaches of their duties of reasonable care owed to Plaintiffs have proximately caused Plaintiffs to suffer damages.

245. The Defendants committed negligence through their acts or omissions relating to the release(s) at the Site, and they are liable to Plaintiffs for any and all damages arising out of this negligence.

#### **Count IV –Environmental Legal Action**

246. Plaintiffs hereby incorporate paragraphs 1 through 245 of this Complaint as though fully restated herein.

247. Defendants caused and/or contributed to release(s) of hazardous chemicals at the Site and failed to properly investigate and remediate the resulting contamination.

248. Pursuant to Indiana Code §§'s 13-30-9-2, and 13-30-9-3, Plaintiffs are entitled to recover reasonable costs of removal or remedial action from Defendants, together with attorneys' fees and expenses.

#### **Count V – Negligent Infliction of Emotional Distress**

249. Plaintiffs hereby incorporate paragraphs 1 through 249 of this Complaint as though fully restated herein.

250. When the Plaintiffs were exposed to the hazardous chemicals in their drinking water and associated vapors that have invaded their homes, they sustained a direct impact as a result of the Defendants' negligence.

251. By virtue of Plaintiffs' direct involvement in that impact, they sustained serious emotional trauma of a type normally expected to occur in a reasonable person.

252. The Defendants' acts and omissions with respect to the releases that impacted Plaintiffs and caused them to suffer emotional distress constitute negligent infliction of emotional distress. As such, the Defendants are liable to Plaintiffs for the resulting damages.

#### **Count VI – Punitive Damages**

253. Plaintiffs hereby incorporate paragraphs 1 through 252 of this Complaint as though fully restated herein.

254. The Defendants knew or had reason to know that dangerous contamination from their release(s) had migrated or would migrate into the Meadow Farms Subdivision.

255. The Defendants took no action to prevent the contamination from migrating into the Meadow Farms Subdivision or to remove their contamination from the

Meadow Farms Subdivision and did not notify or warn the neighborhood's residents of the potential harm from the contamination.

256. The Defendants knew or had reason to know that the contamination from the release(s) posed a risk to human health and the environment, especially to the health and environment of the Plaintiffs who were down gradient from the Site.

257. The Defendants' conduct in allowing hazardous chemicals to be released into the environment and to migrate into the Plaintiffs homes and bodies, and the Defendants' failure to remediate the contamination or to stop the contamination from migrating off-site demonstrate the Defendants' knowing and willful disregard for the health, well-being, and property of the Plaintiffs as well as the general public.

258. The Defendants' schemes to defraud EPA and IDEM in order to conceal the Dygert Seating Entities' violations of environmental laws demonstrates Defendants' knowing and willful disregard for the health, well-being, and property of the Plaintiffs as well as the general public.

259. Based on the Defendants' willful disregard of or gross negligence toward Plaintiffs' and the public's health, well-being and property, an award of punitive damages is appropriate to deter the Defendants and others from engaging in such a grossly negligent or willful manner in the future.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

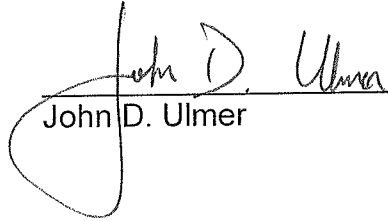
1. Enter judgment in favor of Plaintiffs and against the Defendants;
2. Order the Defendants to pay Plaintiffs an amount that will fully and fairly compensate Plaintiffs for their past and prospective damages;

3. Order the Defendants to pay Plaintiffs for their reasonable attorneys' fees and costs, including expert witness fees, of this litigation;
4. Order the Defendants to remove the contamination, including all related fumes, that emanated from the Marina Drive Property and the Cooper Drive Property and now exists on the Plaintiffs' properties to non-detect levels;
5. Award reasonable costs for medical monitoring;
6. Award punitive damages against the Defendants;
7. Award Plaintiffs all other appropriate injunctive relief; and
8. Award Plaintiffs all further relief that is just and proper.

#### **Jury Demand**

Plaintiffs, by counsel, hereby respectfully demand a trial by jury on all issues so triable.

Respectfully submitted,

  
\_\_\_\_\_  
John D. Ulmer

**Attorneys for Plaintiffs**

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1397435.1

**Lane Street Ground Water Plume Bounday Map  
Defined by Chlorinated VOC's from Key Findings List &  
Preliminary Assessment Ground Water Sampling Results  
Elkhart, Elkhart County, IN  
EPA ID: INN000510229**



0 250 500 750  
0 75 150 225  
Feet  
Meters



**Legend**

- Sample Locations
- Lane Street Gound Water Plume Boundary

**IDEM**  
INDIANA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Maped by: Mike Hill, IDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, September 11, 2006

**Sources:**

- 2005 Indiana Orthophotography (IndianaMap Framework Data [www.in.gov/indianamap](http://www.in.gov/indianamap))
- The ground water plume boundary was defined by drawing a line connecting the outermost ground water sample locations with known detections of chlorinated VOC's based on the Key Findings List and the Preliminary Assessment Ground Water Sampling Results.

Disclaimer: This map graphically depicts locations and is intended for Hazard Ranking System (HRS) scoring purposes.